

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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AMERICAN EXPRESS TRAVEL RELATED  
SERVICES,

Plaintiff-Appellant,

v

KIRK REDNER,

Defendant-Appellee.

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UNPUBLISHED  
March 16, 2006

No. 264904  
Oakland Circuit Court  
LC No. 04-060008-CZ

Before: Schuette, P.J., and Murray and Donofrio, JJ.

PER CURIAM.

Plaintiff appeals as of right the order granting summary disposition in favor of defendant in this breach of contract case. Because a genuine issue of material fact exists regarding whether plaintiff and defendant entered into a valid contract, summary disposition was inappropriate, and we reverse.

Defendant was the president and an employee of Showtech Presentation Systems, Inc. (Showtech). According to defendant, Showtech applied for a corporate credit card with plaintiff, and defendant never saw or reviewed any paperwork relating to the application of the corporate credit card. Other employees of Showtech received and maintained any paperwork regarding the application. Defendant did not sign the application for the corporate credit card, nor did he sign any documentation relating to the issuance of the corporate credit card.

Plaintiff sent a corporate card in response to the application. Defendant claims that the card was issued to Showtech. Plaintiff asserts that the card was issued in the name of defendant.

Along with the credit card, plaintiff sent an "Agreement between Corporate Cardmember and [plaintiff]." The agreement stated that the potential corporate cardmember should read it thoroughly before signing or using the enclosed credit card. That agreement also stated, "By signing, using, or accepting the Corporate card, you will be agreeing with us to everything written here" and "If you do not wish to be bound by this Agreement, cut the Corporate Card in half and return the pieces to us." Within its definition section, the agreement defined a "Corporate Cardmember" as "the person named on the endorsed Corporate card."

Defendant used the credit card. According to defendant, all the purchases he made with the corporate credit card were for Showtech and defendant did not make any personal purchases

with the corporate credit card. Defendant also claimed that all invoices relating to the corporate credit card were sent to Showtech and that, to the best of defendant's knowledge, Showtech made all payments on the corporate credit card. Plaintiff asserted \$99,155.20 from charges made on the credit card is unpaid.

Plaintiff filed a complaint asserting that defendant is indebted to plaintiff pursuant to the contract. Plaintiff also asserted that it has completed performance and that defendant owes plaintiff \$99,155.20. Defendant filed a motion for summary disposition asserting that Showtech, not defendant, applied for the credit card and that defendant neither agreed to be personally liable for the charges on the credit card nor to guarantee any debts arising from the card. Defendant also asserted that all purchases made with the credit card were for Showtech. Defendant claimed that he was not personally liable on the account and that plaintiff had no claims against him. Plaintiff responded, arguing that the credit card was issued in defendant's name and that the agreement between plaintiff and defendant clearly states that the person named on the card is liable for the charges made on the card, regardless of whether the statements were sent to a business address. Plaintiff further asserted that defendant's use of the card bound defendant to the agreement. Plaintiff then filed a motion for summary disposition pursuant to MCR 2.116(C)(9) and (C)(10), and defendant responded. The trial court heard arguments on the motions for summary disposition, and after receiving confirmation that defendant had not signed any agreements, the trial court granted defendant's motion for summary disposition. It is from this order that plaintiff now appeals.

Defendant did not state under which rule it moved for summary disposition, nor did the trial court state under which rule it granted summary disposition. In light of the facts of this case, the trial court could have conceivably granted summary disposition under MCR 2.116(C)(7) or (C)(10). "This Court reviews de novo a trial court's decision to grant summary disposition." *Burkhardt v Bailey*, 260 Mich App 636, 646; 680 NW2d 453 (2004).

Under MCR 2.116(C)(7), summary disposition is proper when a claim is barred because of the statute of frauds. *Slater Management Corp v Nash*, 212 Mich App 30, 31-32; 536 NW2d 843 (1995). In making a decision under MCR 2.116(C)(7), this Court considers all documentary evidence submitted by the parties, accepting as true the contents of the complaint unless affidavits or other appropriate documents specifically contradict it. *Bryant v Oakpoint Villa Nursing Centre, Inc*, 471 Mich 411, 419; 684 NW2d 864 (2004).

"A party's claim to summary disposition based on MCR 2.116(C)(10) tests the factual sufficiency of the complaint and must be supported or opposed by affidavits, depositions, admissions, or other documentary evidence." *Burkhardt, supra* at 646. "The trial court must consider the evidence in a light most favorable to the nonmoving party." *Id.* "Where the proffered evidence fails to establish that a disputed material fact remains for trial, summary disposition is properly granted to the party so entitled as a matter of law." *Id.*

The trial court most likely granted summary disposition pursuant to MCR 2.116(C)(7). MCR 2.117(C)(7) provides, in part, for summary disposition where a claim is barred by the statute of frauds. In this case, defendant repeatedly argued the statute of frauds barred plaintiff's claim because defendant never promised to guarantee the debts of Showtech in writing. At the motion hearing, the trial court seemed to rule in favor of defendant primarily because defendant

never signed anything, which suggests that the trial court agreed with defendant's statute of frauds argument and granted the motion pursuant to MCR 2.116(C)(7).

Granting defendant summary disposition pursuant to MCR 2.116(C)(7) would be inappropriate in this case. The statute of frauds does require that every agreement to answer for the debt of another be in writing and signed by the party to be charged. MCL 566.132(1)(b); *also see Schier, Deneweth & Parfitt PC v Bennett*, 206 Mich App 281, 283; 520 NW2d 705 (1994). At no point, however, did plaintiff argue that defendant agreed to answer for the debts of Showtech. From the complaint onward, plaintiff has always asserted that it had a contract with defendant that defendant himself had breached. Thus, MCL 566.132(1)(b) is irrelevant to that claim and the trial court erred if it granted summary disposition on that ground that the statute of frauds barred plaintiff's claim.

We must also review this case to determine whether summary disposition should be granted under MCR 2.116(C)(10) since the trial court may have granted summary disposition pursuant to that rule. Defendant asserted in its motion for summary disposition that he had never entered into an agreement with plaintiff. As part of that argument, defendant relied on the lack of a signed contract showing any agreement. It is possible that the trial court determined that there was no contract between the two parties as a matter of law. If no genuine dispute exists regarding whether there was a contract, and defendant was correct as a matter of law, then summary disposition would be appropriate under MCR 2.116(C)(10). Even if the trial court had improperly granted summary disposition under MCR 2.116(C)(7), this Court would still have to decide whether summary disposition is appropriate under MCR 2.116(C)(10). A decision that reaches the right result for the wrong reason will not be reversed on appeal. *Grand Trunk W R, Inc v Auto Warehouse Co*, 262 Mich App 345, 354; 686 NW2d 756 (2004).

Contrary to plaintiff's argument on appeal, when deciding whether a valid contract was formed, a court should examine extrinsic evidence. The parol evidence rule establishes that parol evidence of contract negotiations, or of prior or contemporaneous agreements that contradict or vary the terms of a contract, is not admissible to vary the terms of a contract that is clear and unambiguous. *Blackburne & Brown Mortgage Company v Ziomek*, 264 Mich App 615, 627; 692 NW2d 388 (2004). The parol evidence rule does not, however, apply in determining whether an agreement exists at all. *Id.*

Whether a contract has been formed involves a factual determination. *In re Costs & Attorney Fees*, 250 Mich App 89, 97; 645 NW2d 697 (2002). "The essential elements of a valid contract are the following: '(1) parties competent to contract, (2) a proper subject matter, (3) a legal consideration, (4) mutuality of agreement, and (5) mutuality of obligation.'" *Hess v Cannon Township*, 265 Mich App 582, 592; 696 NW2d 742 (2005), quoting *Thomas v Leja*, 187 Mich App 418, 422; 468 NW2d 58 (1991). In this case, only the mutuality of agreement requirement is at issue.

"Before a contract can be completed, there must be an offer and an acceptance." *Eerdmans v Maki*, 226 Mich App 360, 364; 573 NW2d 329 (1997). "An offer is defined as 'the manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it.'" *Id.*, quoting Restatement Contracts, 2d, § 24. An acceptance sufficient to create a contract arises where the individual to whom an offer is extended manifests intent to be bound by the offer by voluntarily

undertaking some unequivocal act sufficient for that purpose. *46th Circuit Trial Court v Crawford County*, 266 Mich App 150, 160; 702 NW2d 588 (2005). “The acceptance must be unambiguous and strictly conform to the essential terms of the offer.” *Id.*

In this case, the offer occurred when plaintiff sent the credit card agreement and credit card in response to the application. The offer was clear on what constituted acceptance and rejection of the offer: “By signing, using, or accepting the Corporate card, you will be agreeing with us to everything written here . . . . If you do not wish to be bound by this Agreement, cut the Corporate Card in half and return the pieces to us.”

Less clear is to whom the offer was made and who accepted it. Plaintiff argues that the credit card was issued to defendant personally while defendant argues that the credit card was issued to Showtech. The evidence suggests employees of Showtech applied for the corporate credit card without any involvement by defendant. Defendant states in his affidavit that his name was only on the card because he was authorized to use the card on behalf of Showtech. Defendant further states that he only used the card on behalf of Showtech.

Plaintiff asserts, and defendant did not challenge, that plaintiff sent a Corporate Cardmember agreement along with the credit card. Despite being a corporate credit card, the Corporate Cardmember agreement seems to contemplate an individual user. In the “Liability” section of the agreement, plaintiff expressly states that the Corporate cardmember is responsible for the charges, regardless of whether the cardmember can seek reimbursement from a company. In the “Definitions” section, the agreement states that a “Corporate Cardmember” is “the person named on the endorsed card.” In the bill statement provided below by plaintiff, defendant is named as the corporate cardmember.

“[A] fundamental tenet of all contracts is the existence of mutual assent or a meeting of the minds on all essential terms of a contract.” *Burkhardt, supra* at 655. The actual mental processes of the contracting parties are irrelevant to the construction of contractual terms and it is their manifested intent that matters. *Id.*, at 656. Considering the language of the agreement sent along with the card, defendant manifested an intent to be bound by the agreement when he used the card. On the basis of that clear language, we conclude that there is a genuine issue of material fact regarding whether plaintiff and defendant entered into a valid contract and summary disposition should not have been granted to defendant pursuant to MCR 2.116(C)(10).

Reversed.

/s/ Bill Schuette  
/s/ Christopher M. Murray  
/s/ Pat M. Donofrio